No. 22452

United States
COURT OF APPEALS
for the Ninth Circuit

Carpenters Local 1273 of the United Brotherhood of Carpenters and Joiners of America, Construction General Laborers Local 85, Lane-Coos-Curry-Douglas Counties Building and Construction Trades Council, Oregon State Council of the United Brotherhood of Carpenters and Joiners of America,

Appellants,

v.

Willis A. Hill, doing business as Willis A. Hill, General Contractor,

Appellee.

APPELLANTS' OPENING BRIEF

On Appeal from the United States District Court for the District of Oregon

PAUL T. BAILEY
STEPHEN M. MALM
BAILEY, SWINK & HAAS
617 Corbett Building
Portland, Oregon 97204
Attorneys for Appellants

STEVENS-NESS LAW PUB. CO. PORTLAND, ORE. 1-68

INDEX

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (Cont.)

STATUTES

COURT RULES

No. 22452

United States
COURT OF APPEALS
for the Ninth Circuit

Carpenters Local 1273 of the United Brotherhood of Carpenters and Joiners of America, Construction General Laborers Local 85, Lane-Coos-Curry-Douglas Counties Building and Construction Trades Council, Oregon State Council of the United Brotherhood of Carpenters and Joiners of America,

Appellants,

v.

Willis A. Hill, doing business as Willis A. Hill, General Contractor,

Appellee.

APPELLANTS' OPENING BRIEF

On Appeal from the United States District Court for the District of Oregon

JURISDICTION

This is an appeal from a judgment rendered by the United States District Court for the District of Oregon in a suit brought by the plaintiff-appellee pursuant to Sec. 303(b) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 187(b)).

The plaintiff-appellee is an employer within the meaning of Sec. 2(2) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 152(2)), and engaged in commerce within the meaning of Secs. 2(6) and 2(7) of the Labor-Management Relations Act, as amended (29 U.S.C. Secs. 152(6) and 152(7)) (Cr. 2, 12).[1] The defendant-appellants are labor organizations within the meaning of Sec. 2(5) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 152(5)) (Cr. 2, 12-13). No issue of the District Court's jurisdiction is presented by this appeal.

The United States Court of Appeals for the Ninth Circuit has jurisdiction of this appeal under 28 U.S.C. Sec. 1291 and Rule 73 of the Federal Rules of Civil Procedure. Notice of Appeal was filed in the time and manner required by law (Cr. 23).

STATEMENT OF THE CASE

Willis A. Hill, the plaintiff-appellee, is a general contractor in the building and construction industry (Tr. 20). At the time in question Hill was engaged in the construction of a book store adjacent to the campus of the University of Oregon at Eugene, Oregon (Tr. 23).

From January 18, 1965 until April 9, 1965 (Tr. 32) the defendant-appellant, Lane-Coos-Curry-Doug-

---

[1] Tr. refers to Reporter's Transcript. Cr. Refers to Clerk's record of pleadings. SCr. refers to Clerk's supplemental record of pleadings. See Appendix B, infra, P. 23 for offer, identification and receipt of exhibits.

las Counties Building and Construction Trades Council, picketed the Eugene construction site for the sole purpose of obtaining Hill's execution of the Oregon State Building and Construction Trades Council Articles of Agreement (Joint Ex. 1) (Tr. 159, 193). The picket sign indicated only that working conditions were less than those enjoyed by labor unions affiliated with the appellant Building and Construction Trades Council (Plt. Ex. 6). The sign expressly stated that no dispute existed with any other contractor on the job site (Plt. Ex. 6).

On February 19, 1965 plaintiff-appellee filed a complaint in the United States District Court for the District of Oregon (Cr. 43) pursuant to Sec. 303(b) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 187 (b)), seeking recovery of alleged damages arising from picketing by the Lane-Coos-Curry-Douglas Counties Building and Construction Trades Council. On August 7, 1967, the trial court ruled that the Oregon State Building and Construction Trades Council Articles of Agreement (Joint Ex. 1) violated Sec. 8(e) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 158(e)) and therefore picketing to obtain the Agreement violated Sec. 8(b)(4)(i)(ii)(A) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 158(b)(4)(i)(ii)(A)) (Cr. 12-14). The trial court also assessed damages against the defendant-appellants in the amount of $11,500 (Cr. 12-14). From that decision defendant-appellants are prosecuting this appeal.

STATUTES AND COURT RULES INVOLVED

The following statutory provisions and court rule (set out in full, Appendix A, infra, pp. 21-22) are involved:

Sec. 8(b)(4)(i)(ii)(A) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 158(b)(4)(i)(ii)(A)).

Sec. 8(e) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 158(e)).

Rule 52(a), of the Federal Rules of Civil Procedure.

QUESTIONS PRESENTED

Each question presented by this appeal was raised before the United States District Court.

1. Did the trial court's unelaborated statement of ultimate facts and conclusions of law fail to comply with the requirements of Rule 52(a) of the Federal Rules of Civil Procedure?

2. Does the record fail to provide any support for the trial judge's opinion that the Oregon State Building and Construction Trades Council Articles of Agreement (Joint Ex. 1) violated Sec. 8 (e) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 158 (e)) and that appellants' picketing violated Sec. 8(b)(4)(i)(ii)(A) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 158(b)(4)(i)(ii)(A))?

3. Does the record fail to support the trial court's award of damages in the blanket amount of $11,500?

SPECIFICATIONS OF ERROR

The United States District Court for the District of Oregon erred in the following particulars:

(1) Failing to comply with Rule 52(a) of the Federal Rules of Civil Procedure requiring that in all actions tried upon the facts without a jury the court must find the facts specially and state separately its conclusions of law,

(2) Finding that the Oregon State Building and Construction Trades Council Articles of Agreement (Joint Ex. 1) violated Sec. 8(e) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 158(e)) and that defendant-appellants picketing violated Sec. 8(b)(4)(i)(ii)(A) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 158 (b)(4)(i)(ii)(A)) when the record of this case fails to provide any basis or support for such a finding,

(3) Awarding to plaintiff-appellee total damages in the blanket sum of $11,500 when the record does not provide any support for such an award.

SUMMARY OF ARGUMENT

(1) The trial judge's findings of fact and conclusions of law (Cr. 12-14), holding simply that defend-

ants-appellants' picketing was unlawful and that plaintiff-appellee was damaged in the amount of $11,500 fail to comply with the mandatory requirements of Federal Rule of Civil Procedure 52(a). The trial judge failed to set out any evidentiary basis or facts in the record which would support his ultimate findings and conclusions. Such subsidiary material must be included in a trial court's findings and conclusions to meet the demands of Rule 52(a), particularly in a case such as this where many of the issues are of a highly complex and technical nature.

(2) There is no support in the record for the trial court's decision that the defendants-appellants' picketing was in violation of law. The Oregon State Building and Construction Trades Council Articles of Agreement (Joint Ex. 1) relate solely to matters involved with the contracting and subcontracting of work to be done at a construction site. Such agreements are expressly made lawful by the construction industry proviso to Sec. 8(e) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 158(e)). Even if the agreement can be considered as open to some other interpretation, there is no evidence in the record that the defendant-appellants intended any interpretation other than application to subcontracting at a job site. Under those circumstances lawful interpretation of the Agreement must be adopted. Therefore, picketing to obtain the Agreement did not violate Sec. 8(b)(4)(i)(ii)(A) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 8(b)(4)(i)(ii)(A)).

(3) There is no support in the record for the trial judge's assessment of damages in the blanket amount of $11,500. No theory of damages asserted either by the plaintiff-appellee or the defendant-appellants would result in the computation of total damages in that amount. Furthermore, accountants testifying for all the parties to this proceeding asserted that the accrual method of accounting would be the appropriate method for assessing the damages, if any, sustained by the defendant. If damages exist at all, this proper, accrual method would not result in anything approaching the figure assessed by the trial judge.

ARGUMENT

I

The Trial Court's Findings of Fact and Conclusions of Law Fail to Meet the Requirements of Federal Rule of Civil Procedure 52(a).

Rule 52(a) of the Federal Rules of Civil Procedure requires that in all cases tried without a jury, the trial court shall make findings of fact and state separately its conclusions of law based on those facts. The trial judge must make subsidiary findings as to the evidence produced and detailed facts existing in the record, which establish the basis for and reasoning behind the ultimate conclusions he reaches as to the facts and law of each case. *Deal* v. *Cincinnati Board of Education*, 369 F.2d 55 (6th Cir. 1966); *Kruger* v. *Purcell*, 300 F.2d 830 (3d Cir. 1962).

The 10th Circuit Court of Appeals clearly defined the requirements of Federal Rule of Civil Procedure 52(a) in *Woods Construction Co.* v. *Pool Construction Co.*, 312 F.2d 405, 406 (10th Cir. 1963) when it stated:

> "A conclusion of ultimate fact without any subsidiary or basic findings of fact upon which such conclusion is based is insufficient compliance with Rule 52(a)."

The *Woods Construction Co.* case also makes it clear this requirement is mandatory on the trial court.

The findings of fact and conclusions of law entered by Judge Belloni in the present case (Cr. 12-14) fail in every respect to meet the standard required by Federal Rule of Civil Procedure 52(a). Aside from statements relating to the district court's jurisdiction and dismissal of one defendant from the case, the only matters set out in the findings and conclusions were (1) that the defendant-appellants had engaged in picketing at the plaintiff's construction job-site to require the plaintiff to execute the Oregon State Building and Construction Trades Council Articles of Agreement; (2) that the agreement violated Sec. 8(e) of the Labor-Management Relations Act (29 U.S.C. Sec. 158(e)), and therefore the picketing violated Sec. 8(b) (4) (i) (ii) (A) of the Labor-Management Relations Act (29 U.S.C. Sec. 158(b) (4) (i) (ii) (A)); and (3) that as a result of the picketing, the plaintiff had been damaged in the amount of $11,500. No subsidiary findings of

any nature were made in support of or as a basis for these conclusions of ultimate fact and law.

One of the principal reasons for requiring detailed findings of fact and conclusions of law is to give each appellate court an adequate basis for its review of trial court decisions and to preserve to appellants their full right of appeal from such decisions. *Alexander* v. *Nash-Kelvinator Corp.*, 261 F.2d 287 (2d Cir. 1958). It is neither right nor permissible for an appellate court to review a decision on pure conjecture, *Kruger* v. *Purcell*, 300 F.2d 830 (3d Cir. 1962) or to search the record in an effort to determine the evidence and facts on which a trial court may have relied. *Kelley* v. *Everglades Drainage Dist.*, 319 U.S. 415, 63 S. Ct. 1141 (1943).

Judge Belloni's findings and conclusions do not establish any evidentiary or factual basis in the record for his opinion that the Oregon State Building and Construction Trades Council Articles of Agreement (Joint Ex. 1) violated Sec. 8(e) of the Labor-Management Relations Act as amended (29 U.S.C. Sec. 158 (e)). Neither does he state any support or basis in the record for his conclusion that defendant-appellants' picketing violated Sec. 8((b)(4)(i)(ii)(A) of the Labor-Management Relations Act (29 U.S.C. Sec. 158(b)(4)(i)(ii)(A)) or that resulting damage was caused the plaintiff in the amount of $11,500. This court has no adequate basis for determining whether or not his decision was in error as regards these matters. While the appellants

will assert at a later point in this brief that such conclusions are in fact erroneous and entirely unsupported by the record, their ability to fully and completely set out argument in opposition to the judge's decision is seriously impaired by their inability to discover and direct their remarks to his reasoning.

In *Commissioner of Internal Revenue* v. *Duberstein*, 363 U.S. 278, 80 S. Ct. 1190 (1960), the Supreme Court ordered further proceedings for additional findings where the trial court had made only the simple and unelaborated statement that a particular transfer of property was a "gift." The court held that such a conclusory and general finding failed to comply with Rule 52. Likewise in the instant case, the trial court's finding that the appellant's picketing was for the purpose of obtaining the defendant's execution of a supposedly unlawful agreement and that such picketing was unlawful under Sec. 8(b)(4)(i)(ii)(A) of the Labor-Management Relations Act (29 U.S.C. Sec. 158(b)(4)(i)(ii)(A)) was general and conclusory and unsupported by any subsidiary findings of fact or conclusions of law. That the findings and conclusions fail to comply with the Federal Rule of Civil Procedure 52(a) is clear.

Judge Belloni's assessment of damages at $11,500 in a blanket amount particularly violates prevailing case law construing the requirements of Federal Rule of Civil Procedure 52(a). This total award of damages by the trial judge consisted of various detailed items of damage asserted at the trial by the

plaintiff. No attempt was made by Judge Belloni to reflect in his findings and conclusions the various amounts and items of damage utilized in arriving at his total award. On the other hand the United States Supreme Court and Circuit Courts of Appeal have consistently held that where total damages awarded in a given case are made up of several distinct elements the trial court must give a breakdown of the various items it has included in its total award in order to comply with Rule 52(a), *Hatahley* v. *United States*, 381 U.S. 173, 76 S. Ct. 745 (1956); *Dwyer* v. *Socony-Vacuum Oil Co.*, 276 F.2d 653 (2d Cir. 1960); *Smith* v. *Dental Products Co.*, 168 F.2d 516 (7th Cir. 1948). Absent such a breakdown of the elements of damage considered by the trial court, this court has no adequate way of reviewing the validity or legality of the total award. Likewise, the appellants have nothing to which they can direct their argument that the damage award was erroneous, depriving them of their full right of appellate review.

Furthermore, where the issues involved in the assessment of damages are numerous and highly complex, a greater detailing of the items included in an award of damages is required by Rule 52(a) than would ordinarily be necessary. *United States* v. *Merz*, 306 F.2d 39 (10th Cir. 1962) (dictum) rev'd. on other grounds, 376 U.S. 192, 84 S. Ct. 639 (1964). The award of damages in the present case involved the resolution of extremely complex and highly technical issues, requiring the use of expert testimony

(Tr. 216-248, 261-285) and detailed briefs (SCr. 47-95) by the parties in order to apprise the court of the proper basis for damages. Such a situation clearly calls for a detailed explanation of the total damages awarded. Judge Belloni's failure to offer any explanation for his award does not even approach compliance with Federal Rule of Civil Procedure 52 (a).

In *United States* v. *Forness*, 125 F.2d 928 (2d Cir. 1942), the court held that fact-finding by trial judges is not only necessary for adequate review of cases by appellate courts but is also important for the purpose of evoking care on the part of trial judges in arriving at the facts of each case. The court in the *Forness* case stated that strong impressions gained from the hearing of evidence will often give way when those impressions are expressed in detail on paper. The court concluded that it is every trial judge's responsibility to exercise this degree of care by supporting his ultimate findings with the evidentiary facts and items on which he has relied. Judge Belloni's findings and conclusions, setting out only his ultimate conclusions as to the issues in the case, fail to meet this required standard of care.

Where findings of fact and conclusions of law prepared by a trial court fail to meet the standards of Federal Rule of Civil Procedure 52(a), this court's duty is clear. This case should be remanded to the trial court for appropriate findings and conclusions as to (1) whether or not the Oregon State Building

and Construction Trades Council Articles of Agreement (Joint Ex. 1) violated Sec. 8(e) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 158 (e)); (2) whether or not defendant-appellants' picketing violated Sec. 8(b)(i)(ii)(A) of the Labor-Management Relations Act as amended (29 U.S.C. Sec. 158(b)(4)(i)(ii)(A)); and (3) the assessment of damages allegedly suffered by defendant-appellants. *Irish* v. *United States*, 225 F.2d 3 (9th Cir. 1955).

II

There is no Basis in the Record for the Trial Judge's Finding and Conclusion that Appellants' Picketing was Unlawful.

Apart from the trial court's failure to comply with Federal Rule of Civil Procedure 52(a), there is no basis in the record for the judge's finding and conclusion that the appellants' picketing violated Sec. 8(b)(4)(i)(ii)(A) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 158(b)(4)(i)(ii)(A)). In this regard, it should be kept in mind that the trial judge, and quite properly so, refused to receive in evidence Plaintiff's Exs. 1, 2 and 3 (Tr. 11-12). Absent these pleadings and briefs from various National Labor Relations Board proceedings, the record nowhere supports the conclusion that the appellants' picketing was in violation of law.

The Oregon State Building and Construction Trades Council Articles of Agreement (Joint Ex. 1)

provides, in portions pertinent to this case, the following:

"I

> This Agreement shall apply to and cover all building and construction work performed by the Employer, Developer and/or Owner-Builder within the jurisdiction of any union affiliated with the Council and the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, repair or demolition of a building, structure or other work."

"IX

> It is further agreed that no employee working under this Agreement need . . . cross any picket line or enter any premises at which there is a picket line authorized by the Council; or any other Building and Construction Trades Council or authorized by any Central Labor Council, or handle, transport or work upon or with any products declared unfair by any of such Councils."

A fair reading of these provisions of the Agreement can only lead to the conclusion that they apply solely to situations involving work being done at a construction or job-site. The language of the Agreement read in its entirety, as should properly be done, expressly limits its application to job site matters. Therefore, the Agreement comes within the construction industry proviso to Sec. 8(e) of the Labor-Management Relations Act as amended (29 U.S.C. Sec. 158(e), providing that Sec. 8(e) does not apply to labor agreements in the construction industry to

cease doing business with others or handling products in relation to work to be done at a job site (see Appendix A infra pp. 21-22). Picketing to obtain such agreements is not a violation of Sec. 8(b)(4)(i)(ii)(A). *Orange Belt Dist. Council* v. *NLRB*, 328 F.2d 534 (D.C. Cir. 1964); *Carpenters Local* 383 v. *NLRB*, 323 F.2d 422 (9th Cir. 1963); *Cuneo* v. *Carpenters Dist. Council of Essex County & Vicinity*, 207 F. Supp. 932 (D.C. N.J. 1962).

Appellee will assert that the language "any picket line" in Article IX of the Agreement (Joint Ex. 1) displays an intent to conduct secondary picketing in violation of the Labor-Management Relations Act which renders the Agreement unlawful under Sec. 8(e) and picketing to obtain it a violation of Sec. 8(b)(4)(i)(ii)(A) (29 U.S.C. Sec. 158 (b)(4)(i)(ii)(A)). Such a contention is utterly without support.

Even if the Agreement is read in this narrow fashion without proper reference to the entirety of its terms, at the very least it is susceptible of several constructions, one of them being that "any picket line" refers to activity primary in nature, confined to construction job sites, and thus lawful under the proviso to Sec. 8(e). It is still susceptible of a lawful construction. Where a contract is subject to interpretation in two ways and, "by one of which it would be lawful and the other unlawful, the former will be adopted." *American Machine & Metals, Inc.* v. *DeBothezat Impeller Co.*, 180 F.2d 342 (2d Cir. 1950). A construction rendering a contract of doubtful val-

idity is always to be avoided where another valid and reasonable construction can be placed on it. *Newport News, Shipbuilding & Drydock Co.* v. *United States*, 226 F.2d 137 (4th Cir. 1955).

Since the Agreement (Joint Ex. 1) can reasonably and easily be construed in a valid manner, it is not unlawful in and of itself simply because it does not contain clauses prohibitory of illegal action. *NLRB* v. *Mountain Pacific Chapter AGC*, 270 F.2d 425 (9th Cir. 1959). Thus, the Agreement cannot, under any theory, be construed by its terms as violative of Sec. 8(e).

The only other theory on which the trial judge could have relied to find the Agreement in violation of Sec. 8(e) would be that the appellants had the intent that its language be applied in some unlawful fashion. The record of this case nowhere indicates such an illegal intent on the part of appellants and it was highly improper for the trial court to read any such intent into the Agreement without evidence to support that conclusion. *Los Angeles Bldg and Construction Trades Council*, 151 NLRB 83, 1965 CCH NLRB 9191.

In summary, the Articles of Agreement (Joint Ex. 1) do not by their terms violate Sec. 8(e) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 158(e)) and in fact are expressly within the construction industry proviso to Sec. 8(e). There is no evidence or support for a finding that appellants had an illegal intent in seeking execution

of these Articles of Agreement. Therefore, picketing to obtain their execution did not and could not violate Sec. 8(b)(4)(i)(ii)(A) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 158(b)(4)(i)(ii)(A)). *Carpenters, Local* 383 v. *NLRB,* 323 F.2d 422 (9th Cir. 1963).

III

There is no Basis in the Record for the Trial Judge's Award of Damages.

The record does not support the trial judge's finding and assessment of damages in the amount of $11,500. As set out above, Judge Belloni's failure to sufficiently detail the basis for his award of damages in compliance with Federal Rule of Civil Procedure 52(a) makes it impossible for appellants to know in what particulars his thinking on and evaluation of the matter are in error. However, the following is submitted as establishing the fact that under no circumstances will the record support the result reached by the trial court.

In the first place, plaintiff's and defendant's assertions as to damages (see briefs SCr. 47-95) do not, in any combination, total the $11,500 figure reached by the trial court. This rounded off amount appears to be nothing more than a figure pulled out of the air as being somewhere between the figures contended for by plaintiff and defendants.

In the second place, the entire thrust of the plaintiff-appellee's damage theory was based on a cash

basis method of accounting. (See plaintiff's opening and reply briefs on damages, SCr. 47-59, 79-95). On the other hand, in testimony before the trial court (Tr. 226-231, 261-264) accountants called by both the plaintiff and the defendants agreed that the proper method of accounting in this case would be on an accrual basis. The defendants' answering brief on damages (SCr. 61-78), analyzing the situation on a proper, accrual basis of accounting, makes it clear that the total damages, if any at all, suffered by the plaintiff-appellee do not in any way approach the level awarded by the trial judge.

The testimony and brief on damages are of a highly detailed and technical nature. It would be out of place to set out those entire arguments in this brief. For an analysis of the proper accrual theory for computing any alleged damages see Defendants' Answering Brief, SCr. 61-78, which is a part of this record, and by this reference is incorporated herein. The transcript and that brief clearly point up the trial judge's error in his award of damages. The assessment should not be sustained, and at the very least the matter should be remanded for appropriate determination.

CONCLUSION

For the reasons set forth, it is respectfully submitted that this case be remanded to the trial court with the direction that findings of fact and conclusions of law be entered by the trial judge in confor-

mity with Rule 52(a) of the Federal Rules of Civil Procedure.

In the alternative, if this court does not see fit to remand the case on the above ground, it is respectfully submitted that the trial court's finding that defendant-appellants' picketing was in violation of law be reversed and its assessment of damages be vacated as unsupported by the record or that the case be remanded for a proper assessment of damages, if any, in conformity with the evidence.

PAUL T. BAILEY
STEPHEN M. MALM
Of Attorneys for the Petitioner
BAILEY, SWINK AND HAAS
617 Corbett Building
Portland, Oregon 97204

CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

PAUL T. BAILEY
Of Attorneys for the Petitioner

APPENDIX A

Statutes and Court Rules Involved

"Sec. 8(b) It shall be an unfair labor practice ment Relations Act, as amended (29 U.S.C. Sec. 158 (b) (4) (i) (ii) (A)):

Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents

* * * * *

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an indutry affecting commerce, where in either case an object thereof is—

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e)."

Sec. 8(e) of the Labor-Management Relations Act, as amended (29 U.S.C. Sec. 158(e)):

"Sec. 8(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other em-

ployer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void: *Provided, That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work*: Provided further, That for the purposes of this subsection (e) and section 8(b)(4)(B) the terms 'any employer,' 'any person engaged in commerce or an industry affecting commerce,' and 'any person' when used in relation to the terms 'any other producer, processor, or manufacturer,' 'any other employer,' or 'any other person' shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: Provided, further, That nothing in this Act shall prohibit the enforcement of any agreement which is within the foregoing exception." (emphasis added)

Rule 52(a) of the Federal Rules of Civil Procedure:

"In all action tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; . . ."

APPENDIX B

Exhibits Cited in Appellants' Opening Brief

Exhibit	Offered	Identified	Received
Joint Exhibit #1	Tr. 25		Tr. 25
Plt. Exhibit #1	Tr. 33		
Plt. Exhibit #2	Tr. 34		
Plt. Exhibit #3	Tr. 34		
Plt. Exhibit #6	Tr. 247		Tr. 247